

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARK SILHAN)	
Claimant)	
VS.)	
)	
GREAT PLAINS MANUFACTURING)	Docket Nos. 154,651
Respondent)	& 154,652
AND)	
)	
AETNA CASUALTY & SURETY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

ON the 9th day of June, 1994, the application of the respondent and insurance carrier for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge George R. Robertson, dated April 20, 1994, came on for oral argument.

APPEARANCES

The claimant appeared by and through his attorney, Robert A. Thompson of Salina, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Edward D. Heath, Jr. of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Norman R. Kelly of Salina, Kansas. There were no other appearances.

RECORD

The record is the same as that considered by the Administrative Law Judge and consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the transcript of proceedings before The Honorable George R. Robertson on April 13, 1994, and his Order dated April 20, 1994.

ISSUES

The respondent and its insurance carrier request the Appeals Board review the assessment of penalties against them by the Administrative Law Judge and the appropriateness of the amount of said penalties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds that it has jurisdiction to review this matter pursuant to K.S.A. 44-551(b)(1) and that the April 20, 1994 Order of Administrative Law Judge George R. Robertson should be affirmed.

The facts in this case are that an award was entered on June 4, 1993, by Administrative Law Judge George R. Robertson. Review by the Director was sought and an Order entered September 10, 1993, by Assistant Director William F. Morrissey. Claimant served a Demand for Compensation on October 13, 1993. Respondent thereafter commenced payment of permanent partial disability compensation benefits. However, for some unknown reason, payments ceased December 23, 1993. Counsel for respondent alleges that this cessation of benefits was unintentional and due to computer or human error. However, there is no testimony or other evidence in the record one way or another on this question. Claimant filed his Application for Penalties on February 9, 1994. Respondent reinstated weekly benefits and paid the past-due compensation on or about March 7, 1994.

K.S.A. 44-512a(a) provides:

“In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when due to the person, firm or corporation entitled thereto, the employee shall be entitled to a civil penalty, to be set by the administrative law judge and assessed against the employer or insurance carrier liable for such compensation in an amount of not more than \$100 per week for each week any disability compensation is past due”

The Administrative Law Judge in this case assessed penalties as follows:

Weeks 1-4 @ \$50.00 per week

Weeks 5-10 @ \$100.00 per week

Respondent argues these penalties are excessive in that they are punitive in nature and excessive for what is argued to have been an inadvertent oversight. Respondent's counsel also argues that claimant did not advise him of the weekly compensation payments having stopped until he received the Application for Penalties. While better practice may have been for claimant's counsel to have notified respondent immediately upon his learning of the benefit checks having been stopped, this does not change the fact that it is the respondent's responsibility to make payments when due. The statute is clear that some civil monetary penalty is to be ordered in circumstances such as this and the amount levied by the Administrative Law Judge is appropriate.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge George R. Robertson, dated April 20, 1994, should be and hereby is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert A. Thompson, PO Box 2237, Salina, KS 67402-2237
 Edward D. Heath, Jr., PO Box 95, Wichita, KS 67201-0095
 Norman R. Kelly, PO Box 2388, Salina, KS 67402
 George R. Robertson, Administrative Law Judge
 George Gomez, Director